

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

OP(Crl.).No. 134 of 2015 (Q)

MC.NO. 404/2012 OF FAMILY COURT, KOTTARAKKARA DATED 13-03-2013

PETITIONER :

**BIJU THAMPI, S/O. THAMPI,
PALAMOOTTIL THEKKETHIL, MANTHUKA,
KULANADA, KOZHENCHERY, PATHANAMTHITTA,
RPRESENTED BY POWER OF ATTORNEY HOLDER SRI. THAMPI,
S/O. LATE KUNJIRAMAN, PALAMOOTTIL THEKKETHIL, MANTHUKA,
KULANADA, KOZHENCHERRY,PATHANAMTHITTA
(ORIGINAL POWER OF ATTORNEY PRODUCED
BEFORE THE FAMILY COURT, KOTTARAKKARA).**

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S):

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- 1. JEENA P.,
D/O. PRASAD, JEENA BHAVAN, VAYAKKAL P.O.,
UMMANNOOR VILLAGE, KOTTARAKARA TALUK,
KOLLAM DISTRICT - 691 548.**
 - 2. RIYA BIJU, AGED 9 YEARS,MINOR,
D/O. BIJU THAMPI, REPRESENTED BY HER MOTHER
JEENA P., JEENA BHAVAN, VAYAKKAL,UMMANNOOR VILLAGE,
KOTTARAKARA TALUK, KOLLAM DISTRICT - 691 548.**

R1 BY ADV. SRI.K.V.ANIL KUMAR

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(Crl.).No. 134 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1- TRUE COPY OF THE ORDER DATED 13/03/2013 IN M.C 404/2012 OF THE FAMILY COURT, KOTTARAKKARA.
- EXHIBIT-P2- TRUE COPY OF THE B-DIARY IN M.C 404/2012 OF THE FAMILY COURT, KOTTARAKKARA.
- EXHIBIT-P3- TRUE COPY OF THE C.M.P 280/2014 IN M.C 404/2012 OF THE FAMILY COURT, KOTTARAKKARA.
- EXHIBIT-P4- TRUE COPY OF THE C.M.P 281/2014 IN M.C 404/2012 OF THE FAMILY COURT, KOTTARAKKARA.
- EXHIBIT-P5- TRUE COPY OF THE CRL.M.P 194/2014 IN CRL.M.P 280/2014 IN M.C 404/2012 OF THE FAMILY COURT, KOTTARAKKARA.
- EXHIBIT-P6- TRUE COPY OF THE CRL.M.P 195/2015 IN CRL.M.P 281/2014 IN M.C.404/2012 OF THE FAMILY COURT, KOTTARAKKARA.
- EXHIBIT-P7- TRUE COPY OF THE RECEIPT DATED 24/07/2014 ISSUED FROM FAMILY COURT, KOTTARAKKARA.
- EXHIBIT-P8- TRUE COPY OF THE B-DIARY OF THE FAMILY COURT IN O.P.NO. 1368/2012.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

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O.P.(Crl.) No.134 of 2015

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Dated this the 30th day of July, 2015

J U D G M E N T

The prayers in this Crl.M.C are as follows:

“i. To set aside the Ext.P8 order dated 24.06.2014 to extent it orders directing the petitioner to pay Rs.50,000/- for allowing I.A No.780/2014 and 781/2014 in O.P No.1368/2012 on the Family Court, Kottarakkara.

ii. To direct the Family Court, Kottarakkara to give credit of Rs.50,000/- towards maintenance in M.C No.404/2012 deposited by the petitioner as per Ext.P7 Receipt.

iii. To direct the Family Court, Kottarakkara to allow Exts.P3 to P6 applications in C.M.P No.280/2014, 281/2014, 194/2015 and 195/2015 in M.C No.404/2012 and set aside Ext.P1 Order in M.C No.404/2012 directing the Petitioner to pay maintenance @ Rs.5,000/- each to the respondents from the date of application.

iv. To direct the Family Court, Kottarakkara to consider and pass orders in Exts.P3 to P6 applications in C.M.P No.280/2014, 281/2014, 194/2015 and 195/2015 in M.C No.404/2012 within a stipulated time as directed by this Hon'ble Court and till then the Non-bailable warrant issued against the petitioner in M.C No.404/2012 may be kept in abeyance.

v. To declare that the direction to pay maintenance to the respondents in Ext.P1 order and the order of warrant of arrest issued against the petitioner in M.C No.404/2012 will be subjected to the outcome of the orders passed by the Family Court, Kottarakkara in Exts-P3 to P6 applications in C.M.P No.280/2014, 281/2014, 194/2015 and 195/2015 in M.C No.404/2012.

vi. To issue such other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Heard, Sri.B.Mohan Lal, learned counsel for the petitioner (husband) and Sri.K.V.Anil Kumar, learned counsel appearing for the respondents (wife and minor daughter). Ext.P1 is said to be the

ex parte order dated 13.3.2013 rendered by the Family Court, Kottarakkara in M.C No.404/12 on the maintenance claim made by the first respondent wife against the petitioner husband. Aggrieved by the said ex parte order the petitioner had submitted Ext.P3 application (C.M.P No.280/2014) to set aside the ex parte order. The petitioner had also filed Ext.P4 application (C.M.P No.281/2014) to condone the delay in filing Ext.P3 application to set aside the ex parte order. It is pointed out by the petitioner that certain mistakes had occurred in Exts.P3 and P4 applications and thereupon the petitioner has separately filed Ext.P5 application to correct the mistakes in Ext.P3 application as well as Ext.P6 application to correct the mistakes in Ext.P4 application. Apart from M.C No. 404/2014, the respondent wife had also filed O.P No.1368/12 before the said Family Court on the prayer for recovery of gold ornaments, her money and her claims for past maintenance arrears. The petitioner is said to have made an interim payment of Rs.50,000/- as per Ext.P7. Initially there was a confusion as to whether the said payment is to be credited on account of the directions in M.C No.404/2012 or whether it is to be accounted in respect of the claims in O.P No.1368/2012. It is now submitted by

the learned Advocates appearing for both sides that the said payment of Rs.50,000/- is to be adjusted as against the claims in M.C No.404/2012 and not in respect of O.P No.1368/2012. However, it is pointed out by the respondent wife that there are other pending amounts to the tune of more than Rs.2.5 lakhs to be paid by the petitioner, husband to the respondent wife on account of the directives in Ext.P1 ex parte order. However, it is pointed out by the learned counsel for the petitioner that the issue in that regard is to be considered only after the Family Court takes a decision on the main application to set aside the Ext.P1 ex parte order. However, this Court is of the considered opinion that at least further interim payment of Rs.50,000/- is to be paid by the petitioner on account of the claims in M.C 404/2012, in order to get an order from this Court to direct the court below to consider the application to set aside the ex parte order. This suggestion made by the Court is acceptable to both sides. In the event, it is ordered in the interest of justice as follows:

The court below shall immediately take up for consideration on Ext.P5 (for correction in Ext.P3 application) and Ext.P6 application (for correction in Ext. P4 application) without any

further delay and after hearing both sides shall pass orders thereon urgently. Thereafter, the court below shall take up for consideration in Ext.P4 application to condone the delay. It is made clear that if the petitioner pays an amount of Rs.50,000/- before the consideration of Ext.P4 application, then the condonation of delay sought for in Ext.P4 may be allowed. This is acceptable to both sides. After condoning the delay as prayed for in Ext.P4 application, in view of the petitioner complies to pay the further amount of Rs.50,000/-, after hearing both sides the court below will take a considered decision on Ext.P3 application to set aside the impugned Ext.P1 order, without any further delay. It is further ordered in the interest of justice that until the consideration of Ext.P4 application for delay condonation, all further coercive steps taken in pursuance of the impugned non bailable warrant pending against the petitioner (for the execution of the impugned Ext.P1 ex parte order) will remain under suspension. It is further made clear that on the petitioner paying the interim amount of Rs.50,000 prior to the consideration of Ext.P4 delay condonation application, the impugned warrant will remain automatically recalled. It is further made clear that in case the petitioner does not make the aforestated

interim amount of Rs.50,000/- within a period of 6 weeks from date of receipt of a certified copy of this order or immediately prior to the consideration of Ext.P4 delay condonation application whichever is earlier, then this direction issued herein above for keeping in abeyance the impugned warrant proceedings will stand automatically vacated without any further orders from this Court.

With these observations and directions, the Crl.M.C stands finally disposed of.

sd/-

sab

ALEXANDER THOMAS, JUDGE